

FILE COPY

DEC 29 1920

Supreme Court of the United States

OCTOBER TERM, 1920.

No. 582.

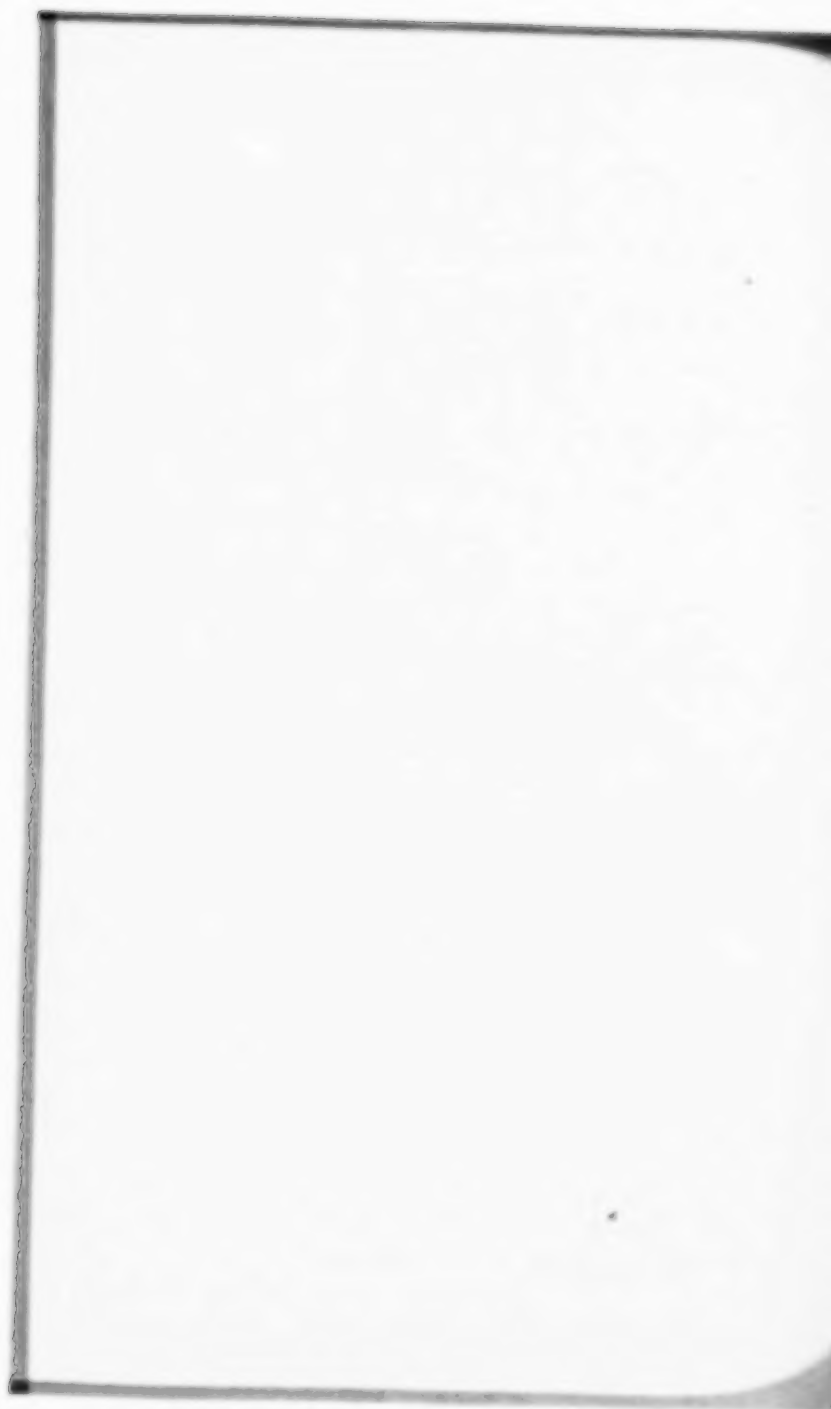
Charles I. Dawson, Attorney General of the
Commonwealth of Kentucky, and individ-
ually, LOUISVILLE PUBLIC WARE-
HOUSE COMPANY (a corporation); John
J. Craig, Auditor of the State of Kentucky,
and individually, - - - - - Appellants,

versus

The J. & A. Freiberg Company (Incorporated), Appellee.

Brief on Behalf of Appellant, Louisville Public Warehouse Company.

W. OVERTON HARRIS,
*Counsel for Louisville Public Warehouse
Company.*



Supreme Court of the United States

OCTOBER TERM, 1920.

No. 582.

CHARLES L. DAWSON, ATTORNEY GENERAL
OF THE COMMONWEALTH OF KENTUCKY,
and individually, LOUISVILLE PUBLIC
WAREHOUSE COMPANY (a corporation);
JOHN J. CRAIG, AUDITOR OF THE STATE
OF KENTUCKY, and individually, - - *Appellants,*

versus

THE J. & A. FREIBERG COMPANY,
(Incorporated), - - - - - *Appellee.*

**BRIEF ON BEHALF OF APPELLANT, LOUISVILLE
PUBLIC WAREHOUSE COMPANY.**

STATEMENT.

This is an appeal from an interlocutory injunction granted by a circuit judge and two district judges, sitting *in banc*, as provided by Section 266 of the Judicial Code. The injunction thus granted restrains the enforcement, operation and execution of an Act of the General Assembly of the Commonwealth of Kentucky upon the ground that it contravenes the Constitution of the United States.

THE FACTS.

On March 12, 1920, an Act, passed by the General Assembly of Kentucky, went into effect. By this Act an "annual license tax" of fifty cents on every proof gallon of distilled spirits stored in a bonded warehouse is made payable to the Commonwealth of Kentucky by the warehouseman, even though ownership of the spirits be in a third person. The Commonwealth is given a lien on the spirits in the warehouse and a lien on the property of the warehouseman to provide payment of this tax. The warehouseman is subrogated to the lien of the Commonwealth in order that it may recover from the owner of the spirits the tax paid by the warehouseman in its representative capacity.

At the time this suit was instituted and the injunction was granted, the appellee, Freiberg Company, was the owner of certain distilled spirits in the warehouse of this appellant, Louisville Public Warehouse Company, which spirits were subject to the tax provided in the Kentucky Act referred to above. On the 22nd of April, 1920, the Freiberg Company demanded of the Louisville Public Warehouse Company that it be permitted to remove said spirits from this appellant's warehouse. This demand was refused, unless the tax of fifty cents on each gallon was first paid by the Freiberg Company. The tax remaining unpaid, the spirits remained in the warehouse of appellant, Louisville

Public Warehouse Company, over the protest of the Freiberg Company. This protest culminated in the proceedings which resulted in the interlocutory injunction, from which this appeal is taken, and which restrains the enforcement of the Kentucky Act.

THE POSITION OF THE LOUISVILLE PUBLIC WAREHOUSE COMPANY.

It is apparent that appellant, Louisville Public Warehouse Company could not afford to permit the removal, or to surrender possession, of the spirits upon which it is, itself, liable to the Commonwealth of Kentucky for the tax in the sum of fifty cents per proof gallon and upon which it is entitled to a lien covering this amount, unless the tax be paid first.

If the Kentucky Act be valid and enforceable, the Commonwealth will look to the Louisville Public Warehouse Company for payment of the tax. In this event the Warehouse Company must rely upon its lien upon the spirits taxed for the amount which the Warehouse Company would be forced to pay to the Commonwealth. But until the validity or non-validity of the Kentucky Act, providing for this tax, be conclusively determined the Louisville Public Warehouse Company could not afford to surrender possession of the spirits or in any way impair the practical value of its lien upon the spirits rightfully belonging to the appellee, Freiberg Company, but stored in the warehouse of the Louisville Public Warehouse Company as bailee.

The position of appellant, Louisville Public Warehouse Company may be likened to that of a stakeholder, to the extent that it is disinterested in attacking, or defending, the validity of the Kentucky Act. Argument of this proposition is, therefore, dispensed with and left to the appellee and those appellants, representing the Commonwealth of Kentucky. It has been thought proper, however, that this relationship between the three parties be clearly stated.

Respectfully submitted,

W. OVERTON HARRIS,
Counsel for Louisville Public Warehouse Company.

